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Nationality of natural persons in relation to the succession of States

Report of the Sixth Committee

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I. Introduction

1. The item entitled "Nationality of natural persons in relation to the succession of States" was included in the provisional agenda of the fifty-fifth session of the General Assembly pursuant to Assembly resolution 54/112 of 9 December 1999.

2. At its 9th plenary meeting, on 11 September 2000, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.

3. The Sixth Committee considered the item at its 31st meeting, on 16 November. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary record (A/C.6/55/SR.31).

II. Consideration of draft resolution A/C.6/55/L.16

4. At the 31st meeting, on 16 November, the representative of Ecuador introduced a draft resolution entitled "Nationality of natural persons in relation to the succession of States".

5. At the same meeting, the Committee adopted draft resolution A/C.6/55/L.16 without a vote (see para. 7).

6. Before the adoption of the draft resolution, the representative of Slovenia made a statement in explanation of position (see A/C.6/55/SR.31).

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III. Recommendation of the Sixth Committee

7. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Nationality of natural persons in relation to the succession of States

The General Assembly,

Having considered chapter IV of the report of the International Law Commission on the work of its fifty-first session,[1] which contains final draft articles on nationality of natural persons in relation to the succession of States,

Noting that the International Law Commission decided to recommend the draft articles to the General Assembly for their adoption in the form of a declaration,

Recalling its resolution 54/112 of 9 December 1999, in which it decided to consider at its fifty-fifth session the draft articles on nationality of natural persons in relation to the succession of States with a view to their adoption as a declaration,

Considering that the work of the International Law Commission on nationality of natural persons in relation to the succession of States would provide a useful guide for practice in dealing with this issue,

Acknowledging that the work of the International Law Commission on this topic could contribute to the elaboration of a convention or other appropriate instrument in the future, and reiterating its invitation, contained in its resolution 54/112, for Governments to submit comments and observations on the question of a convention on nationality of natural persons in relation to the succession of States,

1. *Expresses its appreciation* to the International Law Commission for its valuable work on nationality of natural persons in relation to the succession of States;

2. *Takes note* of the articles on nationality of natural persons in relation to the succession of States, presented by the International Law Commission in the form of a declaration, the text of which is annexed to the present resolution;

3. *Invites* Governments to take into account, as appropriate, the provisions contained therein in dealing with issues of nationality of natural persons in relation to the succession of States;

4. *Recommends* that all efforts be made for the wide dissemination of the text of these articles;

5. *Decides* to include in the provisional agenda of its fifty-ninth session an item entitled "Nationality of natural persons in relation to the succession of States".

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[1] *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10* and corrigenda (A/54/10 and Corr.1 and 2).

Annex

Nationality of natural persons in relation to the succession of States

Preamble

Considering that problems of nationality arising from succession of States concern the international community,

Emphasizing that nationality is essentially governed by internal law within the limits set by international law,

Recognizing that in matters concerning nationality, due account should be taken both of the legitimate interests of States and those of individuals,

Recalling that the Universal Declaration of Human Rights of 1948[2] proclaimed the right of every person to a nationality,

Recalling also that the International Covenant on Civil and Political Rights of 1966[3] and the Convention on the Rights of the Child of 1989[4] recognize the right of every child to acquire a nationality,

Emphasizing that the human rights and fundamental freedoms of persons whose nationality may be affected by a succession of States must be fully respected,

Bearing in mind the provisions of the Convention on the Reduction of Statelessness of 1961,[5] the Vienna Convention on Succession of States in Respect of Treaties of 1978[6] and the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts of 1983,[7]

Convinced of the need for the codification and progressive development of the rules of international law concerning nationality in relation to the succession of States as a means for ensuring greater juridical security for States and for individuals,

Part I. General provisions

Article 1
Right to a nationality

Every individual who, on the date of the succession of States, had the nationality of the predecessor State, irrespective of the mode of acquisition of that nationality, has the right to the nationality of at least one of the States concerned, in accordance with the present articles.

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[2] Resolution 217 A (III).
[3] Resolution 2200 A (XXI), annex.
[4] Resolution 44/25, annex.
[5] United Nations, *Treaty Series*, vol. 989, No. 14498.
[6] See A/CONF.80/31.
[7] See A/CONF.117/14.

Article 2
Use of terms

For the purposes of the present articles:

(a) "Succession of States" means the replacement of one State by another in the responsibility for the international relations of territory;

(b) "Predecessor State" means the State which has been replaced by another State on the occurrence of a succession of States;

(c) "Successor State" means the State which has replaced another State on the occurrence of a succession of States;

(d) "State concerned" means the predecessor State or the successor State, as the case may be;

(e) "Third State" means any State other than the predecessor State or the successor State;

(f) "Person concerned" means every individual who, on the date of the succession of States, had the nationality of the predecessor State and whose nationality may be affected by such succession;

(g) "Date of the succession of States" means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates.

Article 3
Cases of succession of States covered by the present articles

The present articles apply only to the effects of a succession of States occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations.

Article 4
Prevention of statelessness

States concerned shall take all appropriate measures to prevent persons who, on the date of the succession of States, had the nationality of the predecessor State from becoming stateless as a result of such succession.

Article 5
Presumption of nationality

Subject to the provisions of the present articles, persons concerned having their habitual residence in the territory affected by the succession of States are presumed to acquire the nationality of the successor State on the date of such succession.

Article 6
Legislation on nationality and other connected issues

Each State concerned should, without undue delay, enact legislation on nationality and other connected issues arising in relation to the succession of States consistent with the provisions of the present articles. It should take all appropriate

measures to ensure that persons concerned will be apprised, within a reasonable time period, of the effect of its legislation on their nationality, of any choices they may have thereunder, as well as of the consequences that the exercise of such choices will have on their status.

Article 7
Effective date

The attribution of nationality in relation to the succession of States, as well as the acquisition of nationality following the exercise of an option, shall take effect on the date of such succession, if persons concerned would otherwise be stateless during the period between the date of the succession of States and such attribution or acquisition of nationality.

Article 8
Persons concerned having their habitual residence in another State

1. A successor State does not have the obligation to attribute its nationality to persons concerned who have their habitual residence in another State and also have the nationality of that or any other State.

2. A successor State shall not attribute its nationality to persons concerned who have their habitual residence in another State against the will of the persons concerned unless they would otherwise become stateless.

Article 9
Renunciation of the nationality of another State as a condition for attribution of nationality

When a person concerned who is qualified to acquire the nationality of a successor State has the nationality of another State concerned, the former State may make the attribution of its nationality dependent on the renunciation by such person of the nationality of the latter State. However, such requirement shall not be applied in a manner which would result in rendering the person concerned stateless, even if only temporarily.

Article 10
Loss of nationality upon the voluntary acquisition of the nationality of another State

1. A predecessor State may provide that persons concerned who, in relation to the succession of States, voluntarily acquire the nationality of a successor State shall lose its nationality.

2. A successor State may provide that persons concerned who, in relation to the succession of States, voluntarily acquire the nationality of another successor State or, as the case may be, retain the nationality of the predecessor State shall lose its nationality acquired in relation to such succession.

Article 11
Respect for the will of persons concerned

1. States concerned shall give consideration to the will of persons concerned whenever those persons are qualified to acquire the nationality of two or more States concerned.

2. Each State concerned shall grant a right to opt for its nationality to persons concerned who have appropriate connection with that State if those persons would otherwise become stateless as a result of the succession of States.

3. When persons entitled to the right of option have exercised such right, the State whose nationality they have opted for shall attribute its nationality to such persons.

4. When persons entitled to the right of option have exercised such right, the State whose nationality they have renounced shall withdraw its nationality from such persons, unless they would thereby become stateless.

5. States concerned should provide a reasonable time limit for the exercise of the right of option.

Article 12
Unity of a family

Where the acquisition or loss of nationality in relation to the succession of States would impair the unity of a family, States concerned shall take all appropriate measures to allow that family to remain together or to be reunited.

Article 13
Child born after the succession of States

A child of a person concerned, born after the date of the succession of States, who has not acquired any nationality, has the right to the nationality of the State concerned on whose territory that child was born.

Article 14
Status of habitual residents

1. The status of persons concerned as habitual residents shall not be affected by the succession of States.

2. A State concerned shall take all necessary measures to allow persons concerned who, because of events connected with the succession of States, were forced to leave their habitual residence on its territory to return thereto.

Article 15
Non-discrimination

States concerned shall not deny persons concerned the right to retain or acquire a nationality or the right of option upon the succession of States by discriminating on any ground.

Article 16
Prohibition of arbitrary decisions concerning nationality issues

Persons concerned shall not be arbitrarily deprived of the nationality of the predecessor State, or arbitrarily denied the right to acquire the nationality of the successor State or any right of option, to which they are entitled in relation to the succession of States.

Article 17
Procedures relating to nationality issues

Applications relating to the acquisition, retention or renunciation of nationality or to the exercise of the right of option, in relation to the succession of States, shall be processed without undue delay. Relevant decisions shall be issued in writing and shall be open to effective administrative or judicial review.

Article 18
Exchange of information, consultation and negotiation

1. States concerned shall exchange information and consult in order to identify any detrimental effects on persons concerned with respect to their nationality and other connected issues regarding their status as a result of the succession of States.

2. States concerned shall, when necessary, seek a solution to eliminate or mitigate such detrimental effects by negotiation and, as appropriate, through agreement.

Article 19
Other States

1. Nothing in the present articles requires States to treat persons concerned having no effective link with a State concerned as nationals of that State, unless this would result in treating those persons as if they were stateless.

2. Nothing in the present articles precludes States from treating persons concerned, who have become stateless as a result of the succession of States, as nationals of the State concerned whose nationality they would be entitled to acquire or retain, if such treatment is beneficial to those persons.

Part II. Provisions relating to specific categories of succession of States

Section 1
Transfer of part of the territory

Article 20
Attribution of the nationality of the successor State and withdrawal of the nationality of the predecessor State

When part of the territory of a State is transferred by that State to another State, the successor State shall attribute its nationality to the persons concerned who have their habitual residence in the transferred territory and the predecessor State shall withdraw its nationality from such persons, unless otherwise indicated by the exercise of the right of option which such persons shall be granted. The predecessor

State shall not, however, withdraw its nationality before such persons acquire the nationality of the successor State.

Section 2
Unification of States

Article 21
Attribution of the nationality of the successor State

Subject to the provisions of article 8, when two or more States unite and so form one successor State, irrespective of whether the successor State is a new State or whether its personality is identical to that of one of the States which have united, the successor State shall attribute its nationality to all persons who, on the date of the succession of States, had the nationality of a predecessor State.

Section 3
Dissolution of a State

Article 22
Attribution of the nationality of the successor States

When a State dissolves and ceases to exist and the various parts of the territory of the predecessor State form two or more successor States, each successor State shall, unless otherwise indicated by the exercise of a right of option, attribute its nationality to:

(a) Persons concerned having their habitual residence in its territory; and

(b) Subject to the provisions of article 8:

(i) Persons concerned not covered by subparagraph (a) having an appropriate legal connection with a constituent unit of the predecessor State that has become part of that successor State;

(ii) Persons concerned not entitled to a nationality of any State concerned under subparagraphs (a) and (b) (i) having their habitual residence in a third State, who were born in or, before leaving the predecessor State, had their last habitual residence in what has become the territory of that successor State or having any other appropriate connection with that successor State.

Article 23
Granting of the right of option by the successor States

1. Successor States shall grant a right of option to persons concerned covered by the provisions of article 22 who are qualified to acquire the nationality of two or more successor States.

2. Each successor State shall grant a right to opt for its nationality to persons concerned who are not covered by the provisions of article 22.

Section 4
Separation of part or parts of the Territory

Article 24
Attribution of the nationality of the successor State

When part or parts of the territory of a State separate from that State and form one or more successor States while the predecessor State continues to exist, a successor State shall, unless otherwise indicated by the exercise of a right of option, attribute its nationality to:

(a) Persons concerned having their habitual residence in its territory; and

(b) Subject to the provisions of article 8:

(i) Persons concerned not covered by subparagraph (a) having an appropriate legal connection with a constituent unit of the predecessor State that has become part of that successor State;

(ii) Persons concerned not entitled to a nationality of any State concerned under subparagraphs (a) and (b) (i) having their habitual residence in a third State, who were born in or, before leaving the predecessor State, had their last habitual residence in what has become the territory of that successor State or having any other appropriate connection with that successor State.

Article 25
Withdrawal of the nationality of the predecessor State

1. The predecessor State shall withdraw its nationality from persons concerned qualified to acquire the nationality of the successor State in accordance with article 24. It shall not, however, withdraw its nationality before such persons acquire the nationality of the successor State.

2. Unless otherwise indicated by the exercise of a right of option, the predecessor State shall not, however, withdraw its nationality from persons referred to in paragraph 1 who:

(a) Have their habitual residence in its territory;

(b) Are not covered by subparagraph (a) and have an appropriate legal connection with a constituent unit of the predecessor State that has remained part of the predecessor State;

(c) Have their habitual residence in a third State, and were born in or, before leaving the predecessor State, had their last habitual residence in what has remained part of the territory of the predecessor State or have any other appropriate connection with that State.

Article 26
Granting of the right of option by the predecessor and the successor States

Predecessor and successor States shall grant a right of option to all persons concerned covered by the provisions of articles 24 and 25, paragraph 2, who are qualified to have the nationality of both the predecessor and successor States or of two or more successor States.